



GENERAL SERVICES ADMINISTRATION

48 CFR Parts 538 and 552

[GSAR Case 2020-G509; Docket No. GSA-GSAR 2021-0015;

Sequence No. 1]

RIN 3090-AK19

General Services Administration Acquisition Regulation

(GSAR); Extending Federal Supply Schedule Orders Beyond the

Contract Term

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) to incorporate existing internal GSA Federal Supply Schedule (FSS) policy concerning the option to extend the term of the contract and the performance of orders beyond the term of the base FSS contract.

DATES: Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Linn, Procurement Analyst, at gsarpolicy@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARRegSec@gsa.gov. Please cite GSAR Case 2020-G509.

SUPPLEMENTARY INFORMATION:

I. Background

GSA published a proposed rule at 86 FR 48617 on August 31, 2021, to amend the GSAR to incorporate existing internal Federal Supply Schedule (FSS) policy concerning the option to extend the term of the contract and performance of orders beyond the term of the base FSS contract. Specifically, this rule incorporates into the GSAR FSS clause I-FSS-163, Option to Extend the Term of the Contract (Evergreen), and FSS policy concerning standard fill-in information for paragraph (d) of FAR clause 52.216-22, Indefinite Quantity.

II. Discussion and Analysis

A. Summary of Significant Changes

There are no significant changes from the proposed rule. However, two minor editorial changes have been made. The two minor editorial changes are as follows:

- Removal of the proposed changes to 517.207 from the final rule. The reason is because 517.207 is no longer regulatory as the section was made non-regulatory under a final rule published at 86 FR 28499 on May 27, 2021, and corrected at 86 FR 61079 published on November 5, 2021; and
- Change the prescription language for GSAR Clause 52.238-116, Option to Extend the Term of the FSS Contract, noted at section 538.238(d)(36). The final

rule changes the prescription from "Use in all FSS solicitations and contracts" to "Use in FSS solicitations and contracts when appropriate." This change recognizes that not all FSS contracts are five year contracts with three five year options (e.g. VA Schedules).

B. Analysis of Public Comments

No public comments were received in response to the proposed rule.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been reviewed and determined by Office of Management and Budget (OMB) not to be a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

IV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a "major rule" may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The General Services Administration will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This rule has been reviewed and determined by OMB not to be a "major rule" under 5 U.S.C. 804(2).

V. Regulatory Flexibility Act

GSA does not expect this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq.

Therefore, a Final Regulatory Flexibility Analysis has not been performed. GSA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (GSAR Case 2020-G509), in correspondence.

VI. Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 538 and 552

Government procurement.

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Therefore, GSA amends 48 CFR parts 538 and 552 as set forth below:

1. The authority citation for 48 CFR parts 538 and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

2. Revise section 538.270 heading to read as follows:

538.270 Solicitation, evaluation, and award of Federal Supply Schedule (FSS) contracts.

3. Amend section 538.273 by adding paragraphs (d) (36) and (e) to read as follows:

538.273 FSS solicitation provisions and contract clauses.

* * * * *

(d) * * *

(36) 552.238-116, Option to Extend the Term of the FSS Contract. Use in FSS solicitations and contracts when appropriate.

(e) Insert the following fill-in information within the blank of paragraph (d) of FAR clause 52.216-22, Indefinite Quantity: "the completion of customer order, including options, 60 months following the expiration of the FSS contract ordering period".

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Add section 552.238-116 to read as follows:

552.238-116 Option to Extend the Term of the FSS Contract.

As prescribed in 538.273(d) (36), insert the following clause:

OPTION TO EXTEND THE TERM OF THE FSS CONTRACT ([**INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER***])

(a) The Government may require continued performance of this contract for an additional 5 year period. This option may be exercised up to three times.

(b) The Contracting Officer may exercise the option by providing written notice to the Contractor 30 days before the contract expires.

(End of clause)

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